

VIA ECFS

EX PARTE

September 16, 2009

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Suite TW-A325
Washington, DC 20554

Re: GN Docket No. 09-51, WC Docket No. 07-245

Dear Ms. Dortch:

Yesterday, David Armentrout and Jack Wade of FiberNet Inc. as well as Julia Strow and the undersigned on behalf of FiberNet, participated on a conference call with Tom Koutsky, Marcus Maher, B.J. Neal and Joseph Soban. The attached materials describe the points made on the call.

Undersigned is also submitting to the Secretary under separate cover a version of the attached spreadsheets containing confidential information. Appended to those spreadsheets is a request for confidential treatment pursuant to 47 C.F.R. § 0.459.

Respectfully submitted,

/s/ Thomas Jones

Thomas Jones

cc: Marcus Maher
Tom Koutsky
B.J. Neal
Joseph Soban

Pole Attachment Issues

- Two main issues slow broadband deployment
 1. Cost
 2. Speed to market

Cost

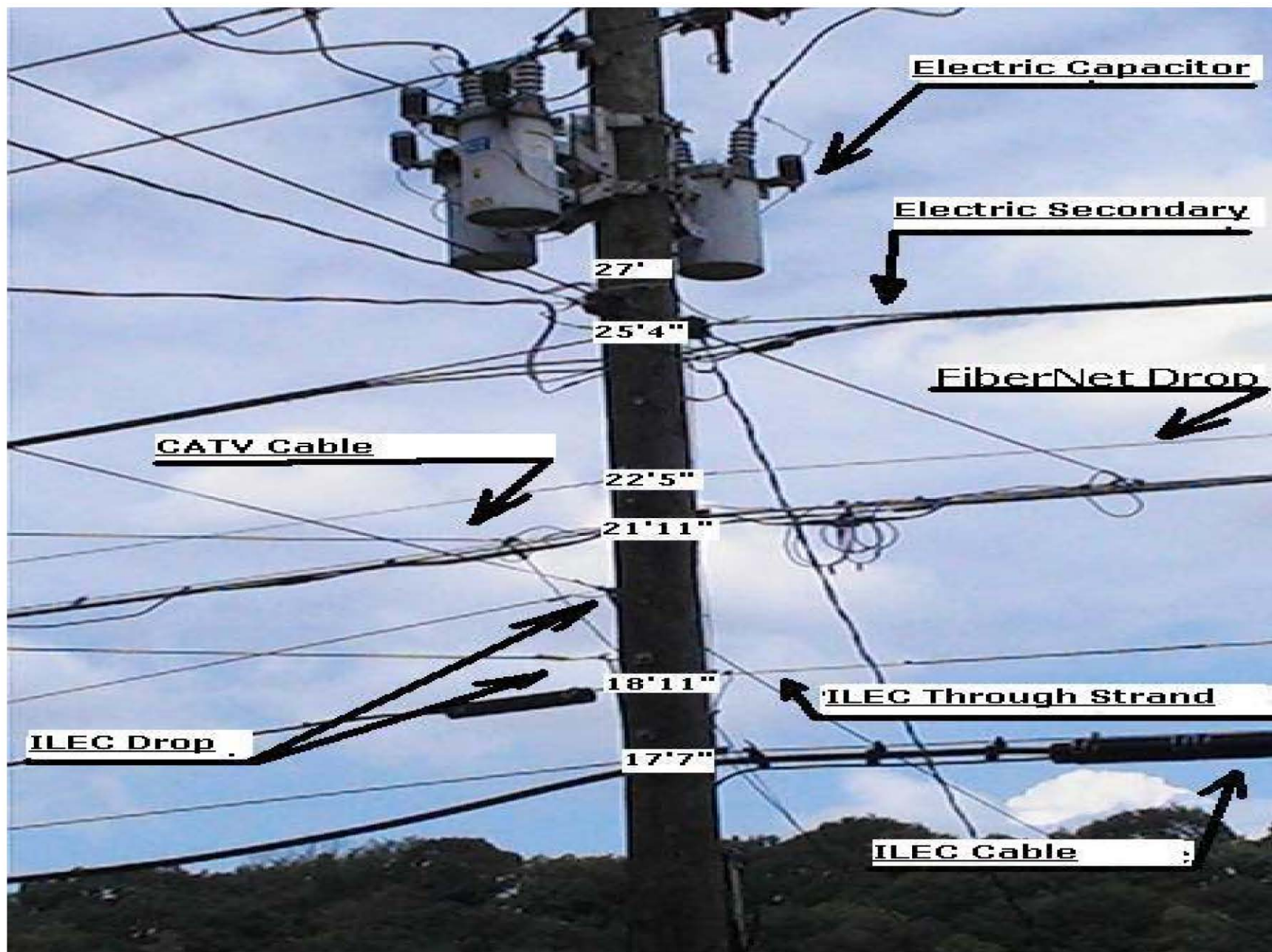
- Attachers are charged varying engineering and make-ready fees that often appear to be far above reasonable levels
- Attachers are often charged make-ready fees to correct other attachers' pre-existing NESC violations on poles
- Attachers pay an annual recurring fee per pole for maintenance, yet we find ourselves paying for the maintenance when it is required.

Sample Make Ready and Engineering Cost

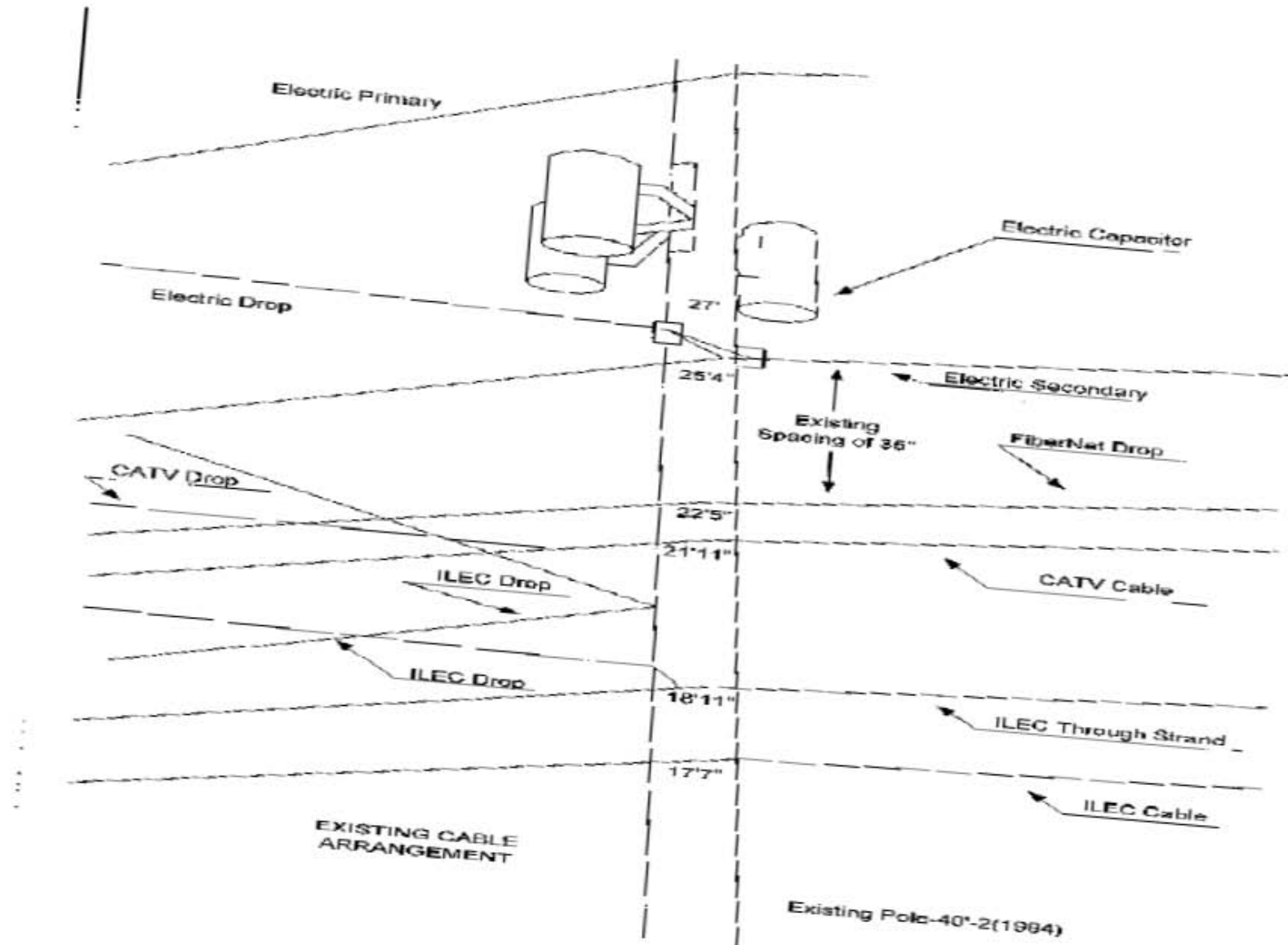
- See File Titled Make-ready CPM
Examples

Examples of Charges for a Fiber Deployment Project: Example #1

- As part of a fiber deployment project to a school, FiberNet needed to attach to a pole with unnecessary congestion among existing attachers
- Rather than require that the existing attachers move their facilities, AEP proposed that FiberNet pay \$5907 to replace the pole with a longer pole
- There is sufficient clearance for FiberNet to attach if Verizon and AEP re-space, (lower attachments).
- This pole has been replaced previously, (note attachments are on back of pole)
- Picture in next slide



Drawings of Previous Picture



Example # 2

- Elsewhere on the same fiber deployment to the school, FiberNet sought to attach to poles between which there was a pre-existing mid-span violation due to excessive “sag”
- AEP had previously planned to place a pole at this mid-span to correct the violation at its own cost
- After FiberNet applied for pole access, AEP proposed charging us \$3690 to replace these 2 poles
- Pictures in the following slides



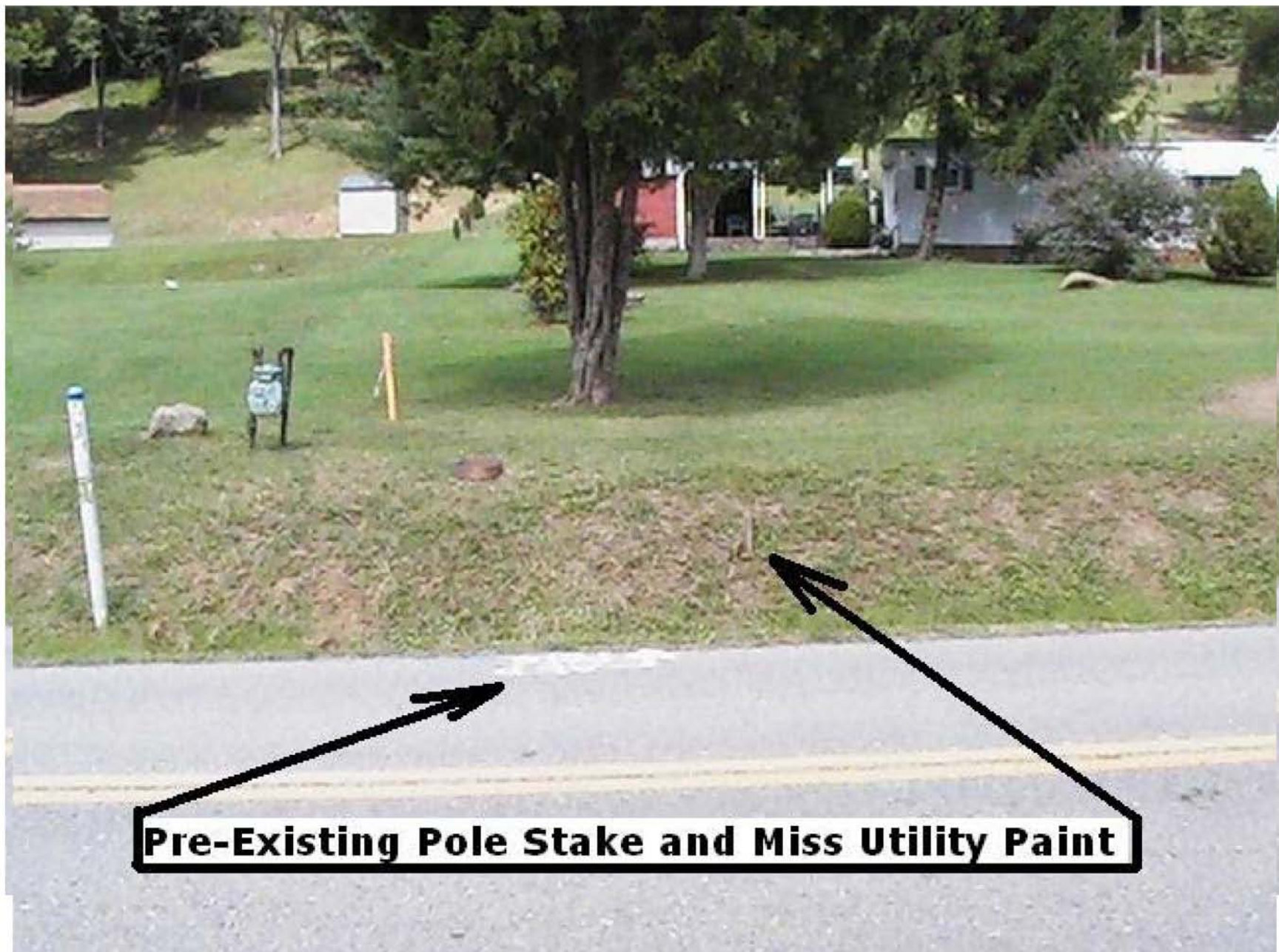
Pole to be replaced 160C9

Pre-Existing Mid-Span Violation

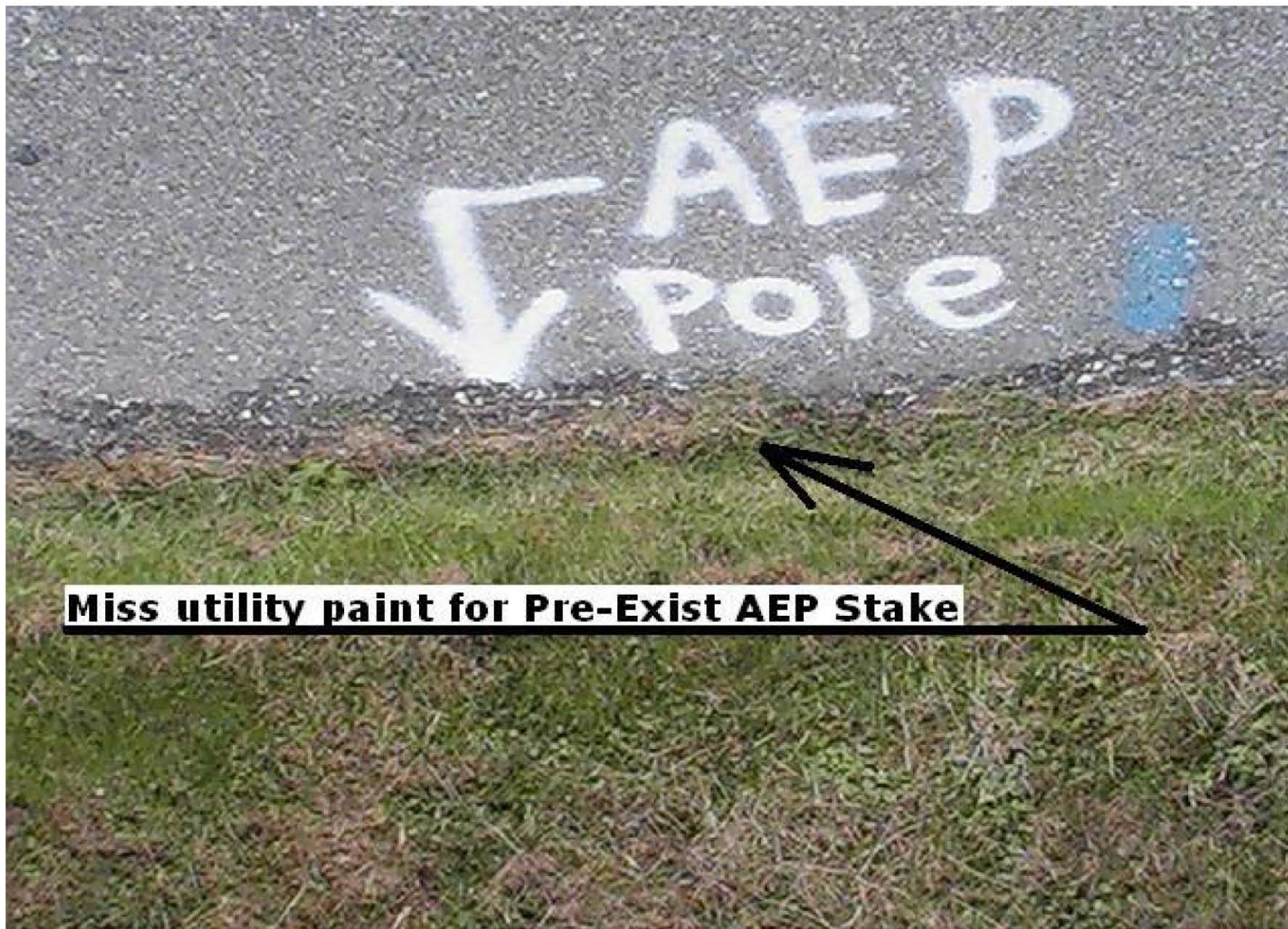
Pre-Existing
Electric Pole Stake



Electric Pole Stake



Pre-Existing Pole Stake and Miss Utility Paint



Miss utility paint for Pre-Exist AEP Stake

Pre-Existing AEP Pole Stake



Aggregate Excess Fees for Deployment Project

- The excess charges listed in the two examples discussed here along with other unnecessary fees caused AEP to charge FiberNet \$24,000 in pole attachment fees for one mile of plant
- FiberNet believes that the attachment fees should have been closer to \$1,000 for a one mile deployment

Speed to Market

- CLEC's are delayed in deploying broadband due to plant construction delays. These delays are caused by:
- Failure to comply with the 45 day interval in the permitting process
- Inefficiencies in engineering work, such as poor coordination of pole maintenance and transfers.

Sample Intervals Pole Permitting

- See File Titled Permit Intervals Example

Pole Attachment Construction Proposal

COPY 1 2 3

Region APCO

Form 6837

To: FiberNet

District Charleston

PROPOSAL # 28959120C2

Work Location City Charleston

This work is due to:

AEP ☒

Other Party:

NTELOS

(Name of company)

Maps/Sketch Attached

* This Proposal identifies planned changes to AEP poles that may affect your company's attachments.

TWP

County

Kanawha

Address

Grid or Pole Number	Location Street/Road Name	Now Joint in Records	Exist HT./CI.	Work Proposed by AEP	Make Ready Required to Maintain Attach.	Make Ready Cost	Licensee to Raise/Lower Attachment	Licensee to Transfer Attachment	Licensee's Reply	Rentals (AEP use)
38820239B40054	7108 MacCorkle Ave	NR	40/4	AEP to RP w/ 45/4; attach at 22'				X		
38820239B40058	7200 MacCorkle Ave	NR	40/2	AEP to RP w/ 45/4; attach at 22'6"				X		
38820239B40061	7300 MacCorkle Ave	NR		at 24', 24'1" and 24'3" lower to 21'6" <i>waiting suddenlink</i>						
38820239B40060	7200 MacCorkle Ave	NR	35/5	AEP to RP w/ 45/4; attach at 24'				X		
38820263A30266	7300 MacCorkle Ave	NR		at 26'7" lower to 25'3" <i>waiting suddenlink</i>			X			
38820239B40055	7200 MacCorkle Ave	NR		at 24'11" lower to 23' <i>// //</i>			X			
38820239B40059	7200 MacCorkle Ave	NR	40/4	AEP to RP w/ 50/4; attach at 24'6"						
38820239B40064	7300 MacCorkle Ave	NR	40/3	AEP to RP w/ 50/3; attach at 21'6"				X		
38820263A30003	7419 MacCorkle Ave	NR		at 24'7" lower to 21'5"			X			
		8/10/09								

Waiting on CATV to move their cable, before FiberNet.

N.R. = pole not yet, replaced

Date FiberNet checked in field

In reference to Proposal #		CNTLW-0081 - NTELOS		TOTAL TO RECAP	
Orig. By (Employee)	<u>M. Jewett</u>	Date of Request from AEP, we have 60 days		PROPOSAL #	<u>28959120C2</u>
Approved By:	<u>04/23/09</u>	The work, and associated costs, as described are accepted by:		WORK ORDER	<u>DAP0161292</u>
AEP COMPLETED:	<u>per</u>	Date		Sheet No.	<u>1</u> of <u>1</u>

Recommended Remedial Action

- **Utilities typically do not meet the required 45 day interval to respond to applications.** This delays the overall process significantly. Establish more effective enforcement of the 45 day timeframe in 47 C.F.R. § 1.1403(b).
- **Power Companies and ILECs use single contractors to do engineering.** Allow attachers to choose among a pool of at least three neutral certificated contractors who will compete for engineering projects. These contractors should have negotiated prices with all attachers so that all attachers know pricing for any construction activity. This would both reduce delays and be more cost effective.
- **Transfers and Make-ready work are not coordinated.** Attachers that are lower on the pole must wait on attachers that are higher up on the pole to complete their work before they can transfer. We need for a neutral contractor to be able to do all transfers to speed up completion.
- **CLECs are charged by utilities for engineering due to pre-existing violations by other attachers.** A party seeking access to a pole should not be penalized for violations that exist due to the owner utility's lack of enforcement.
- **Pole owners do not oversee engineering work sufficiently.** To reduce pole attachment violations the FCC should require that pole owners "sign-off on work completed" thus eliminating any illegal attachments or height violations
- **Notifications to various utilities do not get sent to all utilities at the same time resulting in delays.** All make-ready and pole transfer work should be centrally coordinated.
- **Undefined annual maintenance charges.** We pay for the initial application engineering fees, make-ready costs and service calls in the event there is a cable cut. What is left to be covered under the ARC maintenance charges? Utilities must be required to define the components of ARC charges.
- **Some pole owners do not permit over-lash attachment on last mile.** The FCC should establish an industry standard permitting last mile over-lash and preventing removal of last mile copper.

Recommended Remedial Action - 2

- **Contractor requirements**
- Should be required to be capable of setting poles
- Should be required to be capable of transferring poles
- Should be required to supply best pricing for all work
- Should be able to work for any and all entities attaching to poles

Engineering Make Ready CPM

Project	Utility	Proposal #	Engineering Cost	Total MR Cost	TOTAL	Miles	MR CPM	ENG CPM	TOTAL CPM
[redacted]	Power Utility	[redacted]	\$6,770	\$14,732	\$21,502	2	\$7,366	\$3,385	\$10,751
[redacted]	Power Utility	[redacted]	\$4,169	\$13,815	\$17,984	2	\$6,908	\$2,085	\$8,992
[redacted]	Power Utility	[redacted]	\$7,773	\$29,131	\$36,904	2	\$14,565	\$3,887	\$18,452
[redacted]	Power Utility	[redacted]	\$2,849	\$7,630	\$10,479	2	\$3,815	\$1,425	\$5,240
[redacted]	Power Utility	[redacted]	\$4,431	\$2,367	\$6,798	2	\$1,184	\$2,215	\$3,399
[redacted]	Power Utility	[redacted]	\$0	\$1,079	\$1,079	0.5	\$2,158	\$0	\$2,158
[redacted]	Power Utility	[redacted]	\$307	\$325	\$632	1	\$325	\$307	\$632
[redacted]	Power Utility	[redacted]	\$367	\$1,476	\$1,843	0.5	\$2,952	\$734	\$3,686
[redacted]	Power Utility	[redacted]	\$5,935	\$2,735	\$8,670	3	\$912	\$1,978	\$2,890
[redacted]	Power Utility	[redacted]	\$7,155	\$25,502	\$32,657	1.5	\$17,001	\$4,770	\$21,771
[redacted]	Power Utility	[redacted]	\$6,137	\$14,506	\$20,643	1.5	\$9,671	\$4,091	\$13,762
[redacted]	Power Utility	[redacted]	\$307	\$59	\$366	0.5	\$118	\$614	\$732
[redacted]	Power Utility	[redacted]	\$212	\$3,872	\$4,084	0.5	\$7,743	\$424	\$8,167
[redacted]	Power Utility	[redacted]	\$332	\$609	\$941	0.5	\$1,217	\$664	\$1,881
[redacted]	Power Utility	[redacted]	\$871	\$603	\$1,474	0.5	\$1,207	\$1,742	\$2,949
[redacted]	Power Utility	[redacted]	\$2,793	\$3,621	\$6,414	1	\$3,621	\$2,793	\$6,414
[redacted]	Power Utility	[redacted]	\$5,114	\$3,575	\$8,689	1	\$3,575	\$5,114	\$8,689
[redacted]	Power Utility	[redacted]	\$4,571	\$3,082	\$7,653	1	\$3,082	\$4,571	\$7,653
[redacted]	Power Utility	[redacted]	\$4,177	\$1,130	\$5,307	3	\$377	\$1,392	\$1,769
[redacted]	Power Utility	[redacted]	\$6,427	\$8,795	\$15,222	3	\$2,932	\$2,142	\$5,074
[redacted]	Power Utility	[redacted]	\$1,863	\$1,244	\$3,107	0.5	\$2,488	\$3,726	\$6,214
[redacted]	Power Utility	[redacted]	\$4,405	\$1,346	\$5,751	4	\$336	\$1,101	\$1,438
						Average	\$4,252	\$2,235	\$6,487
[redacted]	ILEC	[redacted]	\$1,104	\$6,554	\$7,658	5	\$1,311	\$221	\$1,532
[redacted]	ILEC	[redacted]	\$480	\$12,717	\$13,821	5	\$2,543	\$96	\$2,764
[redacted]	ILEC	[redacted]	\$3,168	\$12,014	\$15,182	2	\$6,007	\$1,584	\$7,591
[redacted]	ILEC	[redacted]	\$48	\$1,385	\$1,433	0.66	\$2,098	\$73	\$2,171
[redacted]	ILEC	[redacted]	\$288	\$4,005	\$4,293	0.7	\$5,721	\$411	\$6,133
[redacted]	ILEC	[redacted]	\$950	\$11,257	\$12,207	10	\$1,126	\$95	\$1,221
[redacted]	ILEC	[redacted]	\$460	\$7,687	\$8,147	0.75	\$10,249	\$613	\$10,863
						Average	\$4,151	\$442	\$4,611

